

**RULES
OF
THE TENNESSEE DEPARTMENT OF AGRICULTURE
DIVISION OF QUALITY AND STANDARDS**

**CHAPTER 0080-5-13
COMMODITY DEALER REGULATIONS**

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0080-5-13-.01 DEFINITIONS.

- (1) When used in this chapter, unless the context requires otherwise:
 - (a) Act means the Tennessee Commodity Dealer and Warehouse Law, T.C.A. §43-32-101 et seq.
 - (b) Commissioner means the commissioner of the Tennessee Department of Agriculture, or his designated representative;
 - (c) Department means the Tennessee Department of Agriculture;
 - (d) Commodity means grain;
 - (e) Grain means shelled corn, wheat, oats, rye, soybean, rape seed, canola, and grain sorghums.
 - (f) Commodity dealer means any person engaged in the business of buying commodities from producers thereof for resale or for milling or processing. A producer of commodities buying commodities for his own use as seed or feed shall not be considered as being engaged in the business of buying commodities for resale or for milling or processing;
 - (g) Incidental commodity dealer means any commodities dealer who purchases commodities from and whose total purchases of commodities during any fiscal year do not exceed one hundred thousand dollars (\$100,000);
 - (h) Producer means the owner, tenant or operator of land in this state who has an interest in and receives all or any part of the proceeds from the sale of the commodities produced thereon;
 - (i) Persons includes individuals, corporations, partnerships and all associations of two (2) or more persons having a joint or common interest;
 - (j) Class 1 grain dealer means any commodity dealer who purchases commodities from producers and whose total purchases of commodities during any fiscal year exceeds \$100,000 and does not exceed \$500,000.
 - (k) Class 2 grain dealer means any commodity dealer who purchases commodities from producers and whose total purchases of commodities during any fiscal year exceeds \$100,000 and does not exceed \$500,000.

(Rule 0080-5-13-.01, continued)

- (1) Deferred payment, delayed payment, or price later contract means any delivery of grain that is not paid for within thirty days and the title to the grain passed to the buyer upon delivery.

Authority: T.C.A. §§4-3-203 and 43-32-213. **Administrative History:** Original rule filed July 10, 1991; effective August 24, 1991. Amendment filed June 10, 1993; effective July 25, 1993.

0080-5-13-.02 APPLICABILITY OF RULES.

- (1) These rules apply to all persons in the State of Tennessee who buy grain from producers.
- (2) Any person who is engaged in the business of buying grain from producers for reasons other than resale, milling, or processing, shall not be considered to be a grain dealer unless substantial amounts of the grain purchased are used subsequently for resale, milling or processing and not for the reason first purchased, and further provided that:
 - (a) The reason for the purchase of the grain is shown on a contract with the producer; and/or
 - (b) The buyer can demonstrate that grain not used for the reason first purchased did not meet the quality standards of its intended use, or those agreed upon by the buyer and seller.
 - (c) Should the buyer elect to dispose of grain referenced in (b) of this rule, such disposition must be made through a licensed grain dealer.
- (3) Any person that stores grain for a consideration shall be required to have a license in accordance with chapter 0080-5-14 COMMODITY WAREHOUSE REGULATIONS.

Authority: T.C.A. §§4-3-203 and 43-32-213. **Administrative History:** Original rule filed July 10, 1991; effective August 24, 1991.

0080-5-13-.03 APPLICATION FOR LICENSE.

- (1) The application shall set forth:
 - (a) Name of the applicant;
 - (b) The principal officers if the applicant is a corporation; or the active members if the applicant is a partnership;
 - (c) The location of the principal office or place of business of the applicant and the location or locations in this State at which the applicant proposes to engage in business as a grain buyer;
 - (d) The fiscal year in which the grain dealer is or will be operated;
 - (e) The kind of grain which the applicant proposes to purchase.
- (2) If the application has been engaged in business as a grain dealer for one year or more, the applicant shall state the aggregate dollar amount paid to producers for grain during their last completed fiscal year. In the event the applicant has not been engaged in business as a grain dealer, the application shall state the estimated aggregate dollar amount to be paid by the applicant to the producers during the fiscal year. The application must be received by the department within 90 days after the commodity dealers' fiscal year or unless an extension for an additional (60) days has been granted by the department.

(Rule 0080-5-13-.03, continued)

- (3) Any applicant who holds a grain dealer license and requests a warehouseman's license within one fiscal year will not be required to pay the warehouse license filing fee.

Authority: T.C.A. §§4-3-203, 43-32-213 and 43-32-105(b). **Administrative History:** Original rule filed July 10, 1991; effective August 24, 1991. Amendment filed June 10, 1993; effective July 25, 1993.

0080-5-13-.04 SECURITY REQUIREMENTS.

- (1) Every person licensed as a grain dealer shall have filed with the department a surety bond signed by the dealer as principal and by a responsible company authorized to execute surety bonds with the State of Tennessee. A grain dealer may file with the department, in lieu of a surety bond, a certificate of deposit payable to the commissioner as trustee or an irrevocable letter of credit. The principal amount of such certificate of deposit or letter of credit shall be the same as that required for a surety bond under this chapter and the interest thereon shall be payable to the purchaser thereof.
- (2)
 - (a) Surety bonds shall have a principal amount (to the nearest \$1,000) equal to ten percent (10%) of the aggregate dollar amount paid by the dealer to producers for grain purchased from them during the dealer's last completed fiscal year; or, in the case of a dealer who has been engaged in business as a grain dealer for less than one year or who has not heretofore engaged in such business, ten percent (100%) of the estimated aggregate dollar amount to be paid by the dealer to producers for grain purchased from them during the next fiscal year. Such bond shall not be less than \$20,000 nor more than \$100,000, except as otherwise authorized by the act. All dealers licensed after January 1, 1994 shall in addition to amount of surety required by this paragraph be required to have additional surety in the amount equal to eighty percent (80%) of the amount of the grain purchased through price later contracts.
 - (b) The department may, when they question a grain dealer's ability to pay producers for grain purchased, require a grain dealer to post an additional bond or certificate of deposit in a dollar amount deemed appropriate by the department. Failure to post such additional bond or certificate of deposit constitutes grounds for suspension or revocation of a license issued under this act.
 - (c) Such bond or additional bond shall be made payable to the State of Tennessee, with the commissioner of the department as trustee; it shall be conditioned on the grain dealer's faithful performance of his duties as a grain dealer and his compliance with this act; and shall be for the use and benefits of any producer from whom the grain dealer and his compliance with this act; and shall be for the use and benefit of any producer from whom the grain dealer may purchase grain and who is not paid by such grain dealer. Such bond or additional bond shall not be cancelled, except upon at least sixty (60) days notice in writing to the department. In no event shall the total aggregate liability of a surety exceed the face amount of its bond.
- (3) Any grain dealer who is of the opinion that his net worth and assets are sufficient to guarantee payment to producers for grain purchased by him may request the department relieve it from the obligation of filing a bond in excess of the minimum bond of \$20,000. Such request shall be accompanied by a financial statement as follows:
 - (a) Class 2 grain dealers shall submit a complied financial statement prepared by a certified public accountant or a licensed public accountant and shall include a balance sheet and an income statement.
 - (b) Class 1 grain dealers shall submit a reviewed financial statement prepared by a certified public accountant or a licensed public accountant and shall include a balance sheet and an income

(Rule 0080-5-13-.04, continued)

statement, statement of retained earnings, cash flow statements and notes to financial statements.

- (4) The department may waive that portion of the required bond in excess of \$20,000; if the department is otherwise satisfied as to the financial ability and resources of the applicant; if the financial statements submitted disclose a net worth of an amount equal to at least 3 times the amount of bond required; and if the applicant or licensee has met the following requirements:
- (a) The applicant or licensee's financial statement and balance sheet show a current ratio of total adjusted current assets to the total adjusted current liabilities of at least one to one. Adjusted current assets shall be calculated by deducting from the stated current assets shown on the balance sheet submitted by the applicant or licensee, any non-liquid current assets including, but not limited to, notes receivable from officers and stockholders, stock subscriptions receivable, intra company receivables or receivables from an affiliate or any related party receivable. Any disallowed asset shall be netted against any related liability and the net result, if an asset, shall be subtracted from the current assets, or if a liability, it shall remain an adjusted current liability.
 - (b) The financial statement and balance sheet show an adjusted debt to adjusted equity ratio of not more than 3 to one when calculated as follows:
 - 1. Adjusted debt shall be obtained by totaling current and long term liabilities and reducing the total liabilities, up to the amount of current liabilities, by the liquid assets appearing in the current asset section of the balance sheet submitted by the applicant or licensee. Liquid assets shall include but not be limited to cash, marketable securities, accounts receivable from the sale of grain, grain in transit, drying and storage receivables on stored grain, grain inventory, margin accounts and tax funds.
 - 2. Adjusted equity shall be calculated by deducting from the stated net worth shown on the balance sheet submitted by the applicant or licensee after disallowing any non-liquid current asset including, but not limited to, notes receivable from officers or stockholders, accounts receivable from officers or stockholders, stock subscriptions receivable, intra-company receivables or receivables from an affiliate or any other related party receivables. Any disallowed assets shall be netted against any related payable and the new result, if an asset, shall be subtracted from the financial statement; or, if a liability, it shall remain a liability.
 - (c) Such person's financial statement and balance sheet show an adjusted equity of at least \$50,000 as determined pursuant to the method specified in paragraph (2), subparagraph (b). However, in the case of a grain dealer whose net worth is not equal to three times the amount of bond required, the department may allow such grain dealer to waive, in \$1,000 increments, a portion of the bond required in excess of \$20,000. The percentage factor to be applied to the bond required in excess of \$20,000 shall be determined by dividing actual net worth by the net worth required to waive all bond in excess of \$20,000. If the result of this computation provides a percentage factor of 80 percent or greater, then that same percentage of the amount in excess of \$20,000 may be waived. The grain dealer shall then provide to the department a surety bond in the amount of \$20,000 plus any additional bond required in excess thereof.

Authority: TC.A. §§4-3-203, 43-32-213 and 43-32-106. **Administrative History:** Original rule filed July 10, 1991; effective August 24, 1991. Amendment filed June 10, 1993; effective July 25, 1993.

0080-5-13-.05 SECURITY REQUIREMENTS FOR INCIDENTAL COMMODITY DEALERS.

Any grain dealer who purchases grain from producers only in connection with or as an incident to some other business and whose total purchase of grain from producers during any fiscal year do not exceed an aggregate dollar amount of \$100,000, may satisfy the bonding requirements of the Act by filing with the dependent acceptable security at the rate of \$1,000 for each \$10,000 or fraction thereof of the dollar amount to be purchased, with a minimum bond or certificate of deposit of \$1,000 and a current financial statement.

Authority: T.C.A. §§4-3-203 and 43-32-213. **Administrative History:** Original rule filed July 10, 1991; effective August 24, 1991. Amendment filed June 10, 1993; effective July 25, 1993.

0080-5-13-.06 CONDITIONS FOR GRANTING LICENSE. The Department shall issue a grain dealers license, renew a license or continue a license if the department is satisfied that the applicant or license meets the following conditions:

- (1) The applicant, license, or manager is of good business reputation.
- (2) The applicant, licensee, or manager has the qualification and background essential for the conduct of a grain dealer's business, as may be determined by examination and re-examination by the department. The department may require applicants to participate in training programs development to insure compliance with this and other provisions of this act.
- (3) The applicant or licensee has adequate bonding under Rule 0080-5-13-.04 SECURITY REQUIREMENTS.
- (4) The applicant or licensee maintains a permanent business location, and such applicant's or licensee's place of business will remain open during normal business hours.
- (5) The applicant or licensee has sufficient financial resources to pay producers for grain purchased from them.

Authority: T.C.A. §§4-3-203 and 43-32-213. **Administrative History:** Original rule filed July 10, 1991; effective August 24, 1991. Amendment filed June 10, 1993; effective July 25, 1993.

0080-5-13-.07 RESPONSIBILITY OF LICENSED DEALER.

- (1) Each licensee shall display their license in a public area of the principal office of the licensee in this state. If the licensee has more than one (1) location a certificate shall be posted at each location. If the licensee operates trucks only, a certificate should be carried in each truck.
- (2) Regardless of the type record system used, it shall be maintained accurately and timely with daily updates by the licensee. All records shall be maintained for three (3) years.
- (3) All dealers shall give the producer a document indicating the weight, grade, dockage and price of the grain upon settlement.
- (4) A grain dealer shall maintain a liquid position throughout the year. There shall be no evidence of post dated checks, checks returned by a bank due to non-sufficient funds, or that a producer has been asked not to cash a grain dealer's check until a specific date. Any evidence that indicates a non-liquid position may cause a grain dealers' license to be suspended or revoked.
- (5) The department may require the grain dealer to provide a current profit and loss statement and balance sheet; the total bushels of grain and kind of grain sold by means of price later contracts; a

(Rule 0080-5-13-.07, continued)

daily grain transaction report; a report of hedging activities; and a review of the activities of the hedging account for the past sixty (60) days. Such information shall be furnished to the department within ten (10) days of the request.

Authority: T.C.A. §§4-3-203 and 43-32-213. **Administrative History:** Original rule filed July 10, 1991; effective August 24, 1991. Amendment filed June 10, 1993; effective July 25, 1993.

0080-5-13-.08 PRICE LATER CONTRACTS.

- (1) A “delayed payment, deferred price, or price later contract” shall be made out at least in triplicate. One (1) copy shall be given to the producers and one (1) copy kept for grain dealer’s files, the third (3rd) copy shall be filed in numerical order at the dealer’s place of business so that it can be used in the department’s normal examination of the dealer’s records unless otherwise directed by the department. Both the producer and the grain dealer shall sign this agreement within thirty (30) days after completion of delivery of any given lot of grain. If the grain has been priced and paid for within this thirty (30) day period, a price later contract does not need to be executed. A lapse of more than thirty (30) days in delivery shall constitute the end of delivery of a lot of grain for purposes of complying with this rule. This contract must contain clear agreement between the two (2) parties involved as to how the price will be determined.
- (2) When reprinting contracts, the following statements shall be printed on the price later contract:
 - (a) Title to the grain covered by this contract passes to buyer upon delivery;
 - (b) Buyer is required to maintain liquid assets equal to ninety percent (90%) of its price later obligations; and
 - (c) Price later grain is not stored for the seller. This contract is regarded as a grain dealer claim. The maximum coverage afforded by the Tennessee Grain Indemnity Fund is eighty-five percent (85%) of the valid grain dealer claim amount up to a maximum of \$100,000 per claimant.
- (3) Document representing grain delivered to the grain dealer shall clearly indicate that the grain is sold unless it has been sold by the means of the price later contract. In such case, the document will be marked “Sold Grain: Price Later”

Authority: T.C.A. §§4-3-203 and 43-32-213. **Administrative History:** Original rule filed July 10, 1991; effective August 24, 1991. Amendment filed June 10, 1993; effective July 25, 1993.

0080-5-13-.09 SETTLEMENT SHEETS.

If a grain dealer uses settlement sheets, the dealer shall comply with the requirements of this section. Settlement sheets shall be pre-numbered by the printer. The grain dealer shall use settlement sheets in numerical sequence and account for all settlement sheets. Settlement sheets shall contain evidence of the method of settlement, such as check number, warehouse receipt number, or other evidence of settlement. Settlement sheets, both open and closed, shall be filed in a manner to be readily available for examination purposes, such as alphabetical or numerical.

Authority: T.C.A. §§4-3-203 and 43-32-213. **Administrative History:** Original rule filed July 10, 1991; effective August 24, 1991.

0080-5-13-10 SCALE TICKETS.

Scale tickets shall be pre-numbered by the printer. The grain dealer shall issue scale tickets in numerical sequence, and a copy of the scale ticket shall be filed numerically. The grain dealer shall account for all scale tickets.

Authority: T.C.A. § §4-3-203 and 43-32-213. *Administrative History:* Original rule filed July 10, 1991; effective August 24, 1991.